FILED

NOT FOR PUBLICATION

OCT 6 2011

MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN ANTONIO HERNANDEZ, a.k.a. Juan Duran,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-73465

Agency No. A075-119-371

MEMORANDUM*

On Petition for Review of an Order of the Board of Immigration Appeals

Submitted September 27, 2011**

Before: SILVERMAN, W. FLETCHER, and MURGUIA, Circuit Judges.

Juan Antonio Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's removal order. We have jurisdiction under 8 U.S.C. § 1252.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review de novo questions of law, *Khan v. Holder*, 584 F.3d 773, 776 (9th Cir. 2009), and we deny the petition for review.

The agency properly concluded that Hernandez's conviction under California Penal Code § 288(a) is categorically a sexual abuse of a minor aggravated felony under 8 U.S.C. § 1101(a)(43)(A) that renders Hernandez removable under 8 U.S.C. § 1227(a)(2)(A)(iii). See United States v.

Baron-Medina, 187 F.3d 1144, 1147 (9th Cir. 1999). Hernandez's contentions to the contrary are unavailing. See Pelayo-Garcia v. Holder, 589 F.3d 1010, 1013-14 (9th Cir. 2009) (stating that 18 U.S.C. § 2243 defines the generic offense of sexual abuse of a minor with respect to statutory rape crimes, but not with respect to sexual crimes against minors involving abuse); see also United States v. Castro, 607 F.3d 566, 569 (9th Cir. 2010) (stating that California Penal Code § 288(a), which applies only where the minor is younger than fourteen, addresses conduct that is per se abusive).

PETITION FOR REVIEW DENIED.

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